Rushie Law PLLC
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United States District Court
Eastern District of Pennsylvania

Chiye Timothy Lu d/b/a Monarch, *Plaintiff* v. Brian C. Nagele and Cities2nite, LLC, *Defendants*	Jury Trial Demanded No.

Complaint and Request for Injunctive Relief

I. Jurisdiction and Venue

1. This is an action in law and equity for trademark infringement and false designation of origin under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and violations of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1115(d).

2. This court has jurisdiction over this civil action pursuant to 15 U.S.C. 1125 section (a) (1) (A) and 15 U.S.C. 1125 section (a)(1) (B).

3. This court also has jurisdiction to grant injunctive relief in this case pursuant to 15 U.S.C. 1116.

4. The events giving rise to the instant claims and causes of action occurred in the Counties of Philadelphia, Pennsylvania making the United States District Court for the Eastern District of Pennsylvania the appropriate venue for this action pursuant to 15 U.S.C. 1121 (a). “

II. The Parties

5. Plaintiff, Chiye Timothy Lu, is an adult individual whose business address is 1031 Germantown Ave, Philadelphia PA 19123.

6. Defendant, Brian C. Nagele, is an adult individual with an address of 211 N 13th Street, Suite 800, Philadelphia, PA 19107.

7. Defendant, Cities2nite, LLC, is a limited liability corporation formed under Pennsylvania law with a registered address of 117 S. 17th Street, Suite 707, Philadelphia, PA 19104.

III. Facts

North Shore Beach Club is sold to Monarch

8. Chiye Timothy Lu is the owner of Monarch, a restaurant and swimming pool located in the Northern Liberties neighborhood of Philadelphia.

9. Lu purchased the swimming pool on or about December 15, 2015, subject to an Agreement of Sale and Management Agreement.

10. A true and correct copy of the Agreement of Sale and Management Agreement is attached as Exhibit A.

11. Prior to the sale, Monarch was owned by North Shore Beach LLC and did business as “North Shore Beach Club” or “North Shore.”

12. Brian Nagele was the sole member of North Shore Beach LLC, and formerly managed the day to day operations of the pool such as social media, interactions with members, and collecting membership fees.

13. North Shore Beach LLC also had two silent owners — Joe Caruso and Tony Palmer.

14. Each former owner of North Shore Beach Club was paid $50,000.00, for a total of $150,000.00, as consideration for the sale.

15. True and correct copies of the checks are attached as Exhibit B.

16. Brian Nagele received his $50,000.00 payment under North Shore Beach LLC.

17. In consideration, Lu acquired a 49% interest in North Shore Beach, LLC under the Agreement of Sale and Membership Agreement.

18. Nagele retained a 51% interest in North Shore Beach, LLC.

19. Under Paragraph 7a of the Management Agreement, Nagele was entitled to 50% of all pool door revenues until August 15, 2016.

20. Pursuant to the Agreement of Sale, Lu acquired "the tradename "North Shore Beach Club", and all rights thereto, including trademarks, tradenames, goodwill, website, social media, etc. related thereto." (Exhibit A; Paragraph 8).

21. This intellectual property included, without limitation, the domain name northshorebeachclub.com, the North Shore website, email accounts, pictures, and other intellectual property.

22. At no point did Nagele relinquish the northshorebeachclub.com domain or website, although he was required to under the Agreement of Sale.

23. However, Lu decided to transition the brand from North Shore Beach Club into Monarch, although he now legally owned the rights to North Shore's intellectual property and trademarks.

24. On October 29, 2016, Lu exercised his option to purchase the remaining 51% of North Shore Beach, LLC. (A true and correct

copy of the Settlement and Mutual Release is attached as Exhibit C".)

25. Rather than pay Nagele $50,000.00 in cash, Lu assumed a debt owed to CAN Capital of $51,181.44.

26. At that point, Nagele's interest in North Shore was entirely terminated.

Sale of Fraudulent Monarch Memberships by Brian Nagele

27. Monarch generates part of its revenue by selling memberships to the pool each season.

28. These memberships are currently and exclusively sold through Monarch's website, monarchphilly.com.

29. Pool members are contacted via an email newsletter or by updates on Facebook, reminding them to purchase memberships before the season starts, and directed to Monarch's website.

30. Prior to Lu purchasing the swim club and its intellectual property, memberships were sold through the tradename North Shore Beach Club on the website northshorebeachclub.com.

31. After the sale, without authorization, Nagele remained in control of the domain name northshorebeachclub.com, North Shore's email database, email accounts from northshorebeachclub.com, North Shore social media accounts, and essentially all intellectual property that used to be associated with the former business.

32. On information and belief, Nagele then transferred ownership of the northshorebeachclub.com domain to Cities2nite, LLC.

33. On information and belief, Citizens2nite, LLC is currently the owner of northshorebeachclub.com.

34. Despite several repeated requests, Nagele never turned over North Shore's social media, website, domain names, or other intellectual property.

35. Nagele is now using the North Shore intellectual property purchased by Lu to sell fraudulent Monarch pool memberships and keep the money for himself.

36. Email newsletters, social media, and Facebook posts authored by Nagele redirect people seeking a pool membership to the website northshorebeachclub.com.

37. Nagele is actively soliciting sale of fraudulent Monarch memberships by:

    37.1. Fraudulently using the North Shore Beach Club intellectual property and website www.northshorebeachclub.com to divert members from purchasing legitimate memberships from Monarch, and to convince the public that North Shore and Monarch are affiliated

    37.2. Posting sponsored Facebook ads directing members and potential members to the North Shore website, and away from Monarch's website

    37.3. Manipulating search engines to make it appear that Monarch and North Shore are affiliated, and that memberships can still be purchased through the North Shore website

38. A true and correct copy of certain emails and Facebook posts authored by Nagele is attached as Exhibit D.

39. Nagele has no right to operate Monarch, sell memberships, or use North Shore's intellectual property.

40. As such, fraudulent memberships sold by Nagele are not valid at Monarch.

41. Nagele's actions are causing significant confusion in the marketplace.

42. Members of the general public are unsure whether memberships should be purchased through Monarch or North Shore Beach Club, and they do not know that memberships purchased through the North Shore website are invalid.

43. Many customers have purchased memberships through the North Shore website believing they were purchasing memberships to Monarch.

44. Nagele's actions are causing irreparable harm to Lu, because members think that they paid him for a membership which he refuses to honor.

45. Several individuals have contacted Lu over Facebook, email, in person, and over the telephone accusing him of misconduct, damaging his reputation and business. (Exhibit E).

46. Some members of the public are demanding Lu pay refunds for membership fees that were paid directly to Nagele.

47. Further, Nagele is selling his fraudulent memberships for less money than Monarch was selling them, causing Monarch to essentially have to compete with itself.

48. In information and belief, Nagele has collected over $70,000.00 in membership fees, and he will continue to collect significantly more as the swim season approaches.

IV. Causes of Action

Count I
Trademark Infringement Under theLanham Act, 15 U.S.C. § 1051 et seq.

49. The Defendant, in connection with his goods and services, used in commerce Plaintiffs' business' words, terms, name, symbol and/or combinations and likenesses thereof.

50. The Defendant's actions in this regard were deliberate, willful and wanton, were intended to cause confusion and mistake, and were intended to deceive as to the affiliation, connection and association with plaintiff's business, Monarch.

51. These same actions have caused confusion and mistake in the marketplace as to Monarch's affiliation and association with North Shore Beach Club.

52. The Defendant's actions in this regard have and are likely to continue to result in profits for which the defendants would not otherwise receive or be entitled to.

53. The above described actions constitute trademark infringement under Lanham Act, 15 U.S.C. § 1051 et seq.

Count II
Anti-Cybersquatting Consumer Protection Act under Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d)

54. Brian Nagele, through City2night LLC, remains in control of the domain name www.northshorebeachclub.com, which is owned by Plaintiff.

55. Defendants are using the website to divert money that should be going to Plaintiff to himself, and to defraud the public.

56. Defendant has a bad faith intent to profit from the registration and use of the Internet domain name northshorebeachclub.com by selling false Monarch memberships for his own enrichment

57. Defendant's acts are in violation of the Anti-Cybersquatting Consumer Protection Act under Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

V. Relief Requested

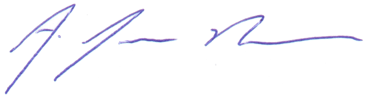
- Nominal, Compensatory and Punitive damages against the defendant in an amount in excess of $150,000.00 under Lanham Act, 15 U.S.C. § 1051, et seq.
- A Temporary Restraining Order, Preliminary Injunction and Permanent Injunction preventing the defendants from using the words North Shore Beach Club, the likeness of plaintiffs' North Shore Beach Club, Monarch, logo, or any other similar promotional variations related hereto.
- A Temporary Restraining Order freezing any and all bank accounts owned by Brian Nagele which membership fees have been paid into
- An accounting of all membership fees paid to North Shore through the website www.northshorebeachclub.com
- The destruction of any and all labels, signs, prints, packages, t-shirts, videos digital reproductions, social media, videos, or any other tangible or electronic advertisement or product in the possession of the defendants and their affiliates that bear the words North Shore, the likeness of North Shore, or any other similar variations related thereto.
- Statutory damages for any and all of the profits generated by defendants while infringing upon the mark as provided in 15 U.S.C. 1117 (a).
- Return of the domain name www.northshorebeachclub.com to the Plaintiff

- Any and all attorney fees, filing fees, costs or other expenses related to the filing and litigation of this lawsuit.
- Any other relief plaintiff may be entitled to that is not requested herein.

WHEREFORE, plaintiff demands judgment in his favor and against defendant in an amount exceeding $150,000.00, including attorneys fees, court costs, expenses, punitive damages, and whatever other relief this Court finds just and proper.

Respectfully Submitted,

Rushie Law PLLC



A. Jordan Rushie
Attorney for Plaintiff

Verification

I, Chiye Timothy Lu, state that I have personal knowledge of the facts in the above discovery responses and I verify them as true, subject to the penalties of 18 Pa. C.S. § 4904, Unsworn Falsification to Authorities, and under the laws of the United States of America.

/S/ *Tim Lu*____________
Chiye Timothy Lu

Dated: March 4, 2017

Exhibit A

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, I, **BRIAN C. NAGELE**, do hereby sell, transfer and assign unto ______________________________ (hereinafter called "assignee") 49% or 49 Units of my 100 Certificates of Membership in **NORTH SHORE BEACH, LLC**, a Pennsylvania Limited Liability Company, standing in my name on the books of the said Company, represented by Certificate No. ____ and I do hereby irrevocably constitute and appoint said assignee as my attorney-in-fact to transfer the said Certificates on the books of the Company with full power of substitution.

DATED: December 10th 2015

X ______________________________
BRIAN C. NAGELE

WITNESS:

____

AGREEMENT OF SALE OF LIMITED LIABILITY UNITS

AGREEMENT made and entered into on this the 10th day of December, 2015 by and between **BRIAN C. NAGELE** (hereinafter referred to as "Seller") and **CHIYE TIMOTHY LU, or his nominee (s)** (hereinafter collectively referred to as "Buyers").

WITNESSETH:

WHEREAS, Seller is the owner and holder of all of the issued and outstanding units of **NORTH SHORE BEACH, LLC**, a Pennsylvania limited liability company (hereinafter referred to as the "Company");

WHEREAS, Seller is the sole member and manager of Company; and

WHEREAS, the sole business activity of Company is the ownership and operation of a certain restaurant/tavern business known as "Kings Oak" and "North Shore Beach Club" (hereinafter referred to as the "Business") located at 1031 Germantown Avenue, Philadelphia, PA 19123 (hereinafter referred to as the "Premises"); and

WHEREAS, the Company hold the Restaurant Liquor License No. R-4526 issued by the Pennsylvania Liquor Control Board ("PLCB") for use at the Premises; and

WHEREAS, the Business is currently open and operating; and

WHEREAS, Seller is desirous of selling his aforesaid units in the Company to Buyers and of divesting himself fully of all interest in the said units, the said Company, and the Business and affairs of the Company;

and

WHEREAS, Buyers are desirous of purchasing the aforesaid units of the Company from Seller and of acquiring full control of the said Company and of relieving Seller of all further responsibility and liability in and for the Business and affairs of the Company; and

WHEREAS, the parties hereto have agreed upon the terms and provisions of the sale of the units of the Company.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual promises and covenants herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Seller hereby agrees to sell and transfer to Buyers, and Buyers hereby agrees to purchase and accept, forty-nine percent (49%) of Seller's units of the Company owned by Seller, and numbering one hundred (100) units.

2. Seller agrees to accept and Buyers agree to pay as consideration for the foregoing the total sum of Fifty Thousand ($50,000.00) Dollars.

3. The aforesaid consideration shall be paid by Buyers to Seller in cash or certified funds at the time and place of settlement as hereinafter set forth.

T.L.

4. ~~As of the date of settlement, Seller hereby resigns from all offices and positions in the Company.~~

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5. At the time of settlement hereunder, Seller shall cause 49% of his shares of stock to be transferred and assigned to Buyers.

6. As an inducement for Buyers to enter into this transaction, Seller hereby warrants and represents as follows:

(a) That Seller is the sole and unconditional owner of all of the units of Company being sold hereunder, and that the said units have not be assigned, transferred, pledged, or encumbered in any manner. The units are to be sold to Buyers free and clear of all liens, security interests, judgments and encumbrances of any nature or kind. No other person or entity holds or has made any claim to the units or any other interest in the Company.

(b) That Seller is the sole member of the Company, and that no other person holds any other position in the Company.

(c) That Seller has not failed to disclose to Buyers any material fact relating to Seller's ownership of the said units or is ability to freely sell, transfer and assign them to Buyers.

(d) That Seller has not failed to disclose to Buyers any material fact concerning the operation of the Company which would have a material impact on the assets or liabilities of the Company.

(e) Seller has the full right and title to sell and transfer his units to Buyers, and that there are no outstanding agreements of sale or options for said units.

(f) That the units are not the subject of any security agreement or other document restricting the sale or transfer thereof.

(g) That there are no outstanding public notices with respect to the operation of a restaurant/tavern business at Premises.

(h) That Seller has for Premises all necessary licenses and permits issued by the appropriate federal, state and local government authorities including but not limited to a current and valid Preparing and Serving Food License issued by the local municipality and that said License shall be valid, current and existing at the time of closing.

(i) That Company has been duly organized and is validly existing in good standing under the laws of the Commonwealth of Pennsylvania.

(j) That this Agreement is a legal, valid and binding obligation of Seller and is enforceable against said party in accordance with the terms of this Agreement.

(k) That the execution, delivery and performance of this Agreement by Seller does not conflict with or result in a violation of the Operating Agreement of Company or any agreement, instrument, order, writ, judgment, or decree to which Seller or Company is a party or subject.

(l) That there are no proceedings before any commission, agency or other administrative authority pending or, to the knowledge of Seller, threatened against or affecting Seller or Company; and there are no outstanding awards, judgments, orders, decrees or stipulations granted or issued by any commission, agency, or other administrative authority which adversely affect the business or property of Seller or Company.

(m) That Company will not, as of the date of settlement, be indebted to any person or entity.

(n) That Company will not, as of the date of settlement, be subject to or party to any contract or commitment except as otherwise specifically provided for herein. There will be no accounts payable, or accounts receivable, as of the date and time of settlement.

(o) That Company has kept full and complete records of all of its transactions and that, at the time of the settlement provided for herein, the records of Company will fully disclose all matters pertaining to all assets, liabilities and financial transactions of Company.

(p) That Seller has made full and complete disclosure to Buyers with respect to the assets, liabilities and financial transactions of Company.

(q) That there are no claims, lawsuits or litigation proceedings pending or threatened against Company, nor are there any governmental actions, proceedings or investigations pending or threatened against Company. Seller has maintained liability insurance for the business for the past two (2) years.

(r) That all taxes, license fees, reports and returns required to be filed by Company with all governmental authorities up to and including the date of settlement have been, or will be at such time, duly filed or proper arrangements made for filing the same with the requisite authorities, and that all taxes due and payable by Company to all governmental authorities for the period of existence of Company to the date of settlement have been or will be paid for at such time, or proper arrangements made for payment of the same with the requisite authorities. An affidavit executed by Company's accountant certifying the above shall be delivered to Buyers at settlement.

7. The Company is in possession of the Premises pursuant to a valid lease agreement (the "Lease") with the record owner of the Premises (hereinafter the "Landlord"). Seller warrants and represents that the Lease is in full force and effect, is current, and is not in default. This agreement is contingent upon Buyers obtaining the consent of the Landlord to the assignment of the Lease to Buyers, or consent to the change of ownership as contemplated by this Agreement, as the case may be, upon terms suitable to Buyers. The lease must be extended for an additional five (5) years, and the rent increases shall to exceed 4% per year. The

Seller must be released from his personal guarantee of the Lease. THIS AGREEMENT IS ABSOLUTELY CONDITIONED UPON THE LANDLORD UNCONDITIONALLY ASSIGNING TO BUYER ALL RIGHTS TO THE SECURITY DEPOSIT(S) BEING HELD BY THE LANDLORD, AND SELLER WAIVES ALL RIGHTS AND CLAIMS THERETO.

8. By purchasing the Company units of Company, Buyers are purchasing and are taking title to all of the furniture, fixtures and equipment located on the Premises. An inventory of the furniture, fixtures and equipment ("FF&E") is attached hereto as Exhibit "A". Buyers are accepting the FF&E in their "AS-IS, WHERE-IS" condition. It is further acknowledged that by purchasing the Company units of Company, Buyers are also purchasing the tradename "North Shore Beach Club", and all rights thereto, including trademarks, tradenames, goodwill, website, social media, etc. related thereto. However, it further acknowledged that by purchasing the Company units of Company, Buyers are **NOT** purchasing the tradename "King's Oak," or any rights thereto, including trademarks, tradenames, goodwill, etc. related thereto, and the same shall be the sole property of Seller (with the exception that Buyers may use all of the Kings' Oak social media accounts provided that Buyers rename them).

9. All representations and warranties made herein are true and correct as of the date hereof, shall continue to be true and

correct at and as of the date of settlement, and at all times between the signing of this Agreement and the date of settlement, and shall survive settlement.

10. It is specifically understood and agreed that Buyers do not assume, and shall in no event be liable for, any liabilities, debts, taxes or obligations of Company or Seller, incurred prior to the date and time of settlement, to any person, including, without limitation, any liability with respect to or responsibility for: (i) any product manufactured or sold by Company or Seller prior to the date and time of settlement; (ii) any claims for injuries to patrons and which claims are the direct result of Company's or Seller's negligence occurring prior to the date and time of settlement; (iii) liabilities incurred by Company or Seller in connection with or pursuant to this Agreement or the transaction contemplated hereby; (iv) debts, liabilities or obligations in respect of which the Seller has indemnified the Buyers; or (vi) obligations for any federal, state or local taxes of the Company or Seller incurred prior to the date and time of settlement.

11. Seller agrees to fully indemnify and save Buyers harmless from and against any and all claims by any creditors of Company or Seller including, but not limited to, any taxing authority, incurred or accrued prior to the date and time of settlement. In the event that any creditor of Limited Liability

Company or Seller asserts such a claim against Buyers, Buyers shall notify Seller of the same, in writing, and Seller shall either pay said claim forthwith or defend the same with due diligence. In the event that it becomes necessary for Buyers to pay said claim or defend the same, Seller shall immediately reimburse Buyers for all costs and expenses incurred by Buyers including, but not limited to, the amount of said claim, all costs and reasonable attorney's fees.

12. Settlement hereunder shall take on or before **August 15, 2016** at 10:00 A.M. at the office of counsel for Buyers, William B. Morrin, Esquire, 1806 Callowhill Street, Philadelphia, PA 19130, unless extended by mutual consent in writing by the parties hereto, said time to be of the essence of this Agreement.

13. In the event of the failure of Seller to make settlement hereunder, Buyers shall have the option of compelling specific performance of this Agreement in lieu of bringing action for damages.

14. Risk of loss caused by fire or other casualty shall at all times during the term of this Agreement remain on the Seller. In the event the Premises are damaged by fire or other casualty during the term of this Agreement, which damage cannot be repaired or is not repaired by Seller by the date of settlement hereunder, Buyers shall have the right to rescind this Agreement and thereafter this Agreement shall be null and void and the parties shall have no further obligation one to another.

15. This Agreement shall extend to and be binding upon the respective heirs, executors, administrators, successors and assigns of each of the parties hereto.

16. This Agreement or any right, title or interest therein may not be assigned or transferred by either party without the express written consent of the parties hereto.

17. This Agreement contains all of the agreements and understanding between the parties hereto and may not be altered or amended except by a writing executed by all of the parties hereto.

18. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania.

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IN WITNESS WHEREOF, intending to be legally bound hereby, the parties have hereunto set their hands and seals the day and year first above written.

SELLER:

WITNESS

X (SEAL)
BRIAN C. NAGELE

BUYERS:

WITNESS

X (SEAL)
CHIYE TIMOTHY LU

IRREVOCABLE
LIMITED POWER OF ATTORNEY
WITH RESPECT TO LIQUOR LICENSE

KNOW ALL MEN BY THESE PRESENTS that the undersigned, **NORTH SHORE BEACH, LLC**, a Pennsylvania limited liability company (the "Company"), and **BRIAN C. NAGELE**, Individually and as the sole member and manager of the Company (the foregoing hereinafter collectively referred to as "Maker") do hereby constitute and appoint ______________________________________, **or his assignee or nominee** (hereinafter referred to as "Agent"), as our true and lawful attorney in our name for the following acts and purposes only:

1. With respect to Maker's Restaurant Liquor License No. **R-4526** (the "License") issued by the Pennsylvania Liquor Control Board (the "PLCB"), to execute any renewals, any applications for transfer, and any and all affidavits, applications, certifications, documents and forms, including the Notice of Application, required by the PLCB and the Pennsylvania Department of Revenue ("Revenue") and the Pennsylvania Department of Labor & Industry ("L&I"), or any other Federal, State or Municipal agency, in order to renew, sell, transfer, convey or reissue said License to any person or entity that

the said Attorney, in his/her/its sole discretion, may choose, ad infinitum; and

2. To communicate on our behalf with the PLCB, Revenue and L&I and any other agencies or persons any and all information and/or details required with respect to said License and our tax status, and to request information from the PLCB, Revenue and L&I and any other agencies or persons pertaining to the License and our tax status; and

3. To file tax returns with Revenue and L&I in order to obtain tax clearance; and

4. To generally do and perform all matters and things, transact all business, make, execute, and acknowledge all contracts, orders, writings, assurances, and other instruments which may be requisite or proper to effectuate the renewal, sale, conveyance, assignment or transfer of all rights, title, and interest in and to said License to any person or entity that the said Attorney in his/her/its sole discretion, may choose, ad infinitum; and

5. This Power of Attorney shall extend to and be binding upon the successors and assigns of the Corporation and upon our heirs, administrators, executors, successors and assigns.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 10th day of December, 2015.

NORTH SHORE BEACH, LLC

BY: ______________________________

ATTEST: ______________________________ **(SEAL)**

X ______________________________
BRIAN C. NAGELE

COMMONWEALTH OF PENNSYLVANIA:
SS
COUNTY OF PHILADELPHIA :

On this, the 10th day of December, 2015, before me, a Notary Public, the undersigned officer, personally appeared Brian C. Nagele, who acknowledged himself to be the sole member and manager of North Shore Beach, LLC, a Pennsylvania limited liability company, and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained and acknowledged the foregoing to be the act and deed of the company, as well as his act and deed personally.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.

Elizabeth Y. Morrin

NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
ELIZABETH Y. MORRIN, Notary Public
City of Philadelphia, Phila. County
My Commission Expires November 29, 2018